UNITED NATIONS

United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court

Rome, Italy
15 June-17 July 1998

Distr.
GENERAL

A/CONF.183/C.1/SR.15
20 November 1998

ORIGINAL: ENGLISH

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE 15th MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Wednesday, 24 June 1998, at 3 p.m.

Chairman: Mr. P. KIRSCH (Canada)

CONTENTS

Agenda item		*Paragraphs*
11	Consideration of the question concerning the finalization and adoption of a convention on the establishment of an international criminal court in accordance with General Assembly resolutions 51/207 of 17 December 1996 and 52/160 of 15 December 1997 (*continued*)	1-132

This record is subject to correction.

Corrections should be submitted in one of the working languages, set forth in a memorandum and/or incorporated in a copy of the record. They should be sent under the signature of a member of the delegation concerned to the Chief of the Official Records Editing Section, Room DC2-750, United Nations, New York.

In accordance with the rules of procedure for the Conference, corrections may be submitted within five working days after the circulation of the record. Any corrections to the records of the meetings of the Committee of the Whole will be consolidated in a single corrigendum.

V.98-57468 (E)

99-81018 (E)

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1 and Corr.1)

Part 4 of the draft Statute (continued)

1. **The CHAIRMAN** said that, in the light of the discussions at the previous meeting, it might be useful to hold informal consultations on four of the provisions that the Coordinator had suggested could be referred to the Drafting Committee, namely article 39, paragraph 3 (a), article 45, paragraph 3, article 48 and article 51.

2. He invited the Committee to continue its consideration of the cluster of articles that it had taken up at the previous meeting ("cluster 1"): articles 35, 36, 37 and 40.

3. **Ms. PAVLIKOVSKA** (Ukraine) said that she was fairly flexible about paragraph 2 of article 37, provided that the principle of equitable geographical distribution set out in paragraph 8 (c) was taken into account. Regarding paragraph 1 of article 37, equitable geographical distribution would have a direct impact on States' trust in the judges. The number of judges should not be less than 18. That would allow at least two judges from each geographical group.

4. **Mr. Young-wook CHUN** (Republic of Korea) said that he favoured a single pre-trial chamber in article 35. Regarding article 36, the problem of full-time versus part-time judges was a financial matter, and should be decided on by States parties depending on the workload. On the qualifications of judges under article 37, all judges should be experienced in criminal law, have an understanding of different cultures and legal systems and be in a position to take into account the circumstances of each criminal. Equitable geographical distribution, therefore, deserved serious consideration. If election through a nominating committee or screening process was adopted, there would be a problem as to who would assess the qualification of a nominee and the standard applied. He therefore supported option 1 in article 37. Although he was flexible on the issue, he would prefer one or three judges in a pre-trial chamber, three judges in a trial chamber and five judges in an appeals chamber.

5. **Mr. AGBETOMEY** (Togo), referring to article 35, said that he favoured a plurality of pre-trial chambers. As for article 36, a permanent court would require full-time judges to make it effective. The number of judges to be provided for in article 37 would depend on the number of chambers and the number of judges in each. The judges must be highly qualified and of high moral character. He questioned the provision in paragraph 6 that "no two judges may be nationals of the same State", since competence should take precedence over nationality. In paragraph 10 of article 37, he would opt for a mandate of five years, renewable once. Age would then not be a problem.

6. **Mr. SALINAS** (Chile) said that there should be pre-trial chambers, trial chambers and appeals chambers. He was flexible on article 36, but thought it desirable that the Court be composed of full-time judges. He agreed on the need in article 37 to heed geographical factors and budgetary limitations. An appropriate number of judges would be about seventeen, sufficient to allow a balance between experience in criminal law, public international law and international humanitarian law. In paragraph 4, he favoured option 1. In paragraph 5, he supported the election of judges by a two-thirds majority of States parties. As to paragraph 8, he agreed with subparagraphs (a), (c), (d) and

(e). With regard to (e), the link with article 5, concerning crimes against humanity, especially gender crimes, should be taken into account. Paragraph 9 could be deleted because no age limit was needed.

7. **Mr. MONETTI** (Italy) said that a pre-trial chamber or chambers was essential and could be composed of a single judge. Rotation was possible, although a judge could not sit in the Pre-Trial Chamber and a second chamber in the same case. In article 36, the second sentence, in square brackets, should be deleted. He would like to see an article containing criteria for assigning judges to chambers, to control the authority given to the Presidency. Judges should be elected by an absolute majority vote of the Assembly of States Parties on the basis of their expertise and experience. A checklist of requirements should be drawn up and sent to States to assist them in assessing candidates' qualifications. The judge's term of office should not be renewable, because the wish of a judge to be confirmed in his office might influence his decisions.

8. **Mr. Sayyid Said Hilal AL-BUSAIDY** (Oman) said that the references to appeals, trial and pre-trial chambers in article 35 (b) should be deleted. The President or the Court should determine the number of chambers required. Article 36 should provide for full-time judges, to guarantee impartiality. As to article 37, he agreed that competence and high moral character were essential qualifications for judges, and he had no difficulty in accepting paragraph 3 (b) (ii), concerning recognized competence in international law, criminal law, international humanitarian law and human rights law. Election of judges, under paragraph 5, should require a two-thirds majority vote of the Assembly of States Parties. In paragraph 8, he favoured the inclusion of subparagraphs (a), (b), (c) and (d), on representation of the main legal systems and forms of civilization in the world, equitable geographical distribution and gender balance. Subparagraph (e) was unnecessary. He had no objection to paragraph 9. In paragraph 10, he would prefer a nine-year non-renewable term of office. As proposed in the second sentence, one third of those elected at the first election could serve for three years, one third for six years and the rest for nine years. The Pre-Trial Chamber should have five members.

9. **Mr. KESSEL** (Canada) supported article 37, paragraph 8 (d), and said that gender balance was one important factor to be taken into account in the nomination process. The Platform for Action adopted by the Beijing World Conference on Women, in its paragraph 142, called on Governments to aim for gender balance when nominating or promoting candidates for judicial and other positions in international bodies such as the United Nations International Tribunals for the Former Yugoslavia and Rwanda. The experience of those Tribunals had demonstrated the benefit of expertise in issues related to sexual and gender violence.

10. **Mr. SHARIAT BAGHERI** (Islamic Republic of Iran) agreed with article 37, paragraph 3, on qualifications of judges. A combination of extensive experience of criminal law and competence in international law was necessary. He agreed with paragraphs 1 and 2 of article 37, without the bracketed reference to geographical distribution in paragraph 1, because that was covered in paragraph 8. As to paragraph 4, he supported option 1, with the term "State Party" and without the reference to national groups. The last sentence should be deleted.

11. In paragraph 8, he supported subparagraphs (a) and (c). The other subparagraphs had drawbacks. The very notion of gender balance was based on discrimination between the sexes and the term gave rise to difficulties of understanding and interpretation. He also wondered why, in subparagraph (e), there was a need to mention specialists in sexual and similar forms of violence; why not also specialists in crimes such as torture, etc.?

12. On articles 35 and 40, he favoured a pre-trial chamber with three judges, two trial chambers with five judges each and an appeals chamber with seven judges. The judges should be elected for a five-year term, non-renewable, so that they would not be influenced by political considerations.

13. **Mr. AL ANSARI** (Kuwait) said that article 35 should provide for a single, permanent pre-trial chamber. Judges should be full-time under article 36. The number of judges should take into account the requirements of article 37, paragraph 8. In article 37, paragraph 2 (a), the text in the first set of square brackets should be deleted, since in acting on behalf of the Court the President would be acting on behalf of all States parties. The text in square brackets in paragraph 3 (a) should be kept. As to paragraph 3 (b), the judges should have at least 10 years' criminal trial experience. In paragraph 4, he was in favour of option 1 and the wording "State Party". Election, under paragraph 5, should be by a two-thirds majority. He did not agree on the need for the age limit in paragraph 9. Paragraph 10 should provide for a single term of nine years. Concerning article 40, paragraph 1, the Appeals Chamber should be composed of five judges and the last sentence should be retained.

14. **Ms. STEAINS** (Australia) saw merit in including the words "extensive criminal law experience" in article 37, paragraph 3 (b). The requirement for 10 years' experience was unnecessary. She also recognized the importance of competence in international law within the membership of the Court. The composition of the different chambers should reflect the nature of the responsibilities of each, judges with criminal law experience predominating in the Pre-Trial and Trial Chambers and a balance of judges with international law and criminal law experience in the Appeals Chamber. In paragraph 8, she preferred the formulation "take into account the need for" to the weaker "bear in mind". Subparagraph (b) should be deleted because the concept was outmoded. She supported the inclusion of references to representation of the principal legal systems of the world and to equitable geographical distribution.

15. She strongly endorsed the need for gender balance, as well as expertise on issues relating to sexual and gender violence, and violence against children, within the membership of the Court. Women and children were often the victims of the crimes which would fall within its jurisdiction.

16. **Mr. MOURID** (Morocco), referring to article 35, said that the Court could be limited to an appeals chamber, a trial chamber and a pre-trial chamber. Each chamber could set up additional chambers where the caseload so required. The full-time appointment of judges would allow them to discharge their functions properly, free from outside influence. He was flexible on paragraph 1 of article 37, but there should be a minimum number of judges. In paragraph 4, he preferred option 1. In paragraph 5, he would prefer election by a two-thirds majority of States parties. Paragraph 8 should read "States Parties shall take into account", followed by the list of criteria. He favoured subparagraph (a) concerning representation of the principal legal systems of the world and subparagraph (c) on equitable geographical distribution. On the question of working languages, article 51, paragraph 2, should be retained in the interests of ensuring justice.

17. **Mr. DA COSTA LOBO** (Portugal) said that in principle, in article 35, he favoured "Pre-Trial Chambers" in the plural. As to article 36, judges should serve on a full-time basis. Article 37 was undoubtedly one of the most important. He saw expertise in criminal law and in international law as alternatives. In that connection, he was very much in sympathy with the suggestion for a screening mechanism between nomination and election. That would give States better information on individual judges and would make it easier to consider the composition of the Court as a whole. The election itself should be by absolute majority in a secret ballot. The Appeals Chamber and Trial Chamber should have at least five judges each.

18. **Mr. NIYOMRERKS** (Thailand) thought that provision should be made for more than one Pre-Trial Chamber in article 35. Under article 36, full-time judges could serve alternately on a rotational basis in the Pre-Trial and Trial Chamber, but should serve in only one Chamber at a given time. In article 37, paragraph 2 (a), he would prefer the deletion of all the brackets. Under paragraph 3 (b), judges should have criminal law experience as well as competence in international law, international humanitarian law and human rights law. Under paragraph 4, States

parties and not national groups should nominate judges, and they should be elected by a two-thirds majority vote of the Assembly of States Parties. He supported paragraph 8, including the references to gender balance and special expertise.

19. Under article 40, paragraph 3, the Presidency should assign judges to trial and pre-trial chambers in accordance with the Rules of Procedure and Evidence. He would prefer a small number of judges in each chamber, and was flexible on the term of office.

20. **Ms. SHAHEN** (Libyan Arab Jamahiriya) said that her position was flexible as to whether, in article 35 (b), there should be a separate pre-trial chamber or not. Under article 36, the judges should carry out their functions on a full-time basis. Under article 37, she would prefer there to be 18 judges. In paragraph 4, she supported option 1, with the use of the expression "State Party". Under paragraph 5, the judges of the Court should be elected by a two-thirds majority vote of the Assembly of States Parties. As for paragraph 8, she agreed with subparagraphs (a) concerning the representation of the principal legal systems of the world, (c) on equitable geographical distribution and (d) on gender balance. Subparagraph (e) was not essential, because expertise would be required in all areas covered by the Court. Under paragraph 10, judges should be appointed for a nine-year term.

21. The general rule for article 40 should be that a judge could not be a member of more than one chamber.

22. **Mr. MORSHED** (Bangladesh) said that the functions contemplated in draft article 13 should be performed by a pre-trial chamber, its composition based on the principle of equitable geographical representation and reflecting the major legal systems of the world.

23. **Mr. SOH** (Cameroon) supported a single pre-trial chamber in article 35. An independent and impartial court required full-time judges, who should have high intellectual and moral qualities and professional competence in both criminal law and international humanitarian law. They should be elected by States parties by a two-thirds majority, taking into account the provisions of subparagraphs 8 (a), (b), (c) and (e) of paragraph 8. He favoured a nine-year, non-renewable term for judges. The number should be the strict minimum necessary for the smooth functioning of the Court.

24. **Mr. KIFLI** (Brunei Darussalam) had no objection to article 37, paragraph 8 (e), on the need for expertise on issues related to sexual and gender violence. He agreed that, under paragraph 9, judges should not be over the age of 65 at the time of election. Regarding paragraph 10, he would prefer judges to hold office for a non-renewable term of nine years.

25. **Mr. KAM** (Burkina Faso) said that he was in favour of the professional qualification requirements for judges in article 37, but that they should be alternatives. As for paragraph 8, the election of judges should take account of the principal legal systems of the world and equitable geographical distribution, but not the aspects mentioned in subparagraphs (d) and (e). The term of office should be at least nine years, but non-renewable. The number of judges would vary depending on the Court's caseload.

26. **Mr. AL ADHAMI** (Iraq) supported a single pre-trial chamber. Under article 36, judges should serve on a full-time basis to guarantee their impartiality and independence. In article 37, paragraph 4, he supported option 1 and nomination by States parties. Under paragraph 5, judges should be elected by secret ballot by a two-thirds majority of States parties present and voting, and the quorum should be one half of the States parties. In paragraph 8, the representation of the principal legal systems of the world, equitable geographical distribution and gender balance

were valid criteria. He supported paragraph 9. Under paragraph 10, judges should be elected for a term of five years, renewable for one term.

27. Under article 40, the Appeals Chamber should be made up of five judges.

28. **Mr. FORTUNA** (Mozambique) supported several trial chambers in article 35 (b). In article 36, he supported full-time judges. The main qualification for judges, in article 37, should be long experience of criminal trials, followed by a background in international criminal law or human rights. Regarding paragraph 4 of article 37, he preferred option 2. He supported paragraphs 5, 6 and 7. In paragraph 8, he would prefer to delete subparagraph (b). In paragraph 9, he supported an age limit of 65 to encourage participation by younger people. Under paragraph 10, a three-year term would allow greater rotation. Finally, in article 40, the minimum composition of the Appeals Chamber should be three judges.

29. **Ms. LA HAYE** (Bosnia and Herzegovina) said that the reference to geographical distribution in the bracketed text to article 37, paragraph 1, might not be sufficient. Consideration should be given to the different cultural and legal traditions within each geographical area. She therefore proposed that, in article 37, paragraph 1, the phrase "and appropriate consideration shall be given to cultural and legal traditions" should be added at the end of the sentence in square brackets, and that a new subparagraph (c) *bis*, "appropriate representation of different cultural and legal traditions", should be added to paragraph 8.

30. **Ms. RWAMO** (Burundi) said that the principle of equitable geographical distribution was essential in recruiting judges with a balance of viewpoints. She was in favour of a non-renewable nine-year term. Article 37, paragraph 8 (e), calling for the inclusion among the judges of experts in sexual and gender violence, should be maintained. She firmly supported subparagraph (d) on gender balance; experience in many countries had already shown the effectiveness of women judges.

31. **Mr. KERMA** (Algeria) said that the Court should have at least one Pre-trial Chamber. Under article 36, full-time judges would facilitate the smooth operation of the Court, but the availability of financial resources must be taken into account. Under article 37, the total number of judges would depend on the composition of each chamber, but should not be less than 17. It should be for the Assembly of States Parties to elect the judges. There was no need to specify the number of years of experience, but judges must have expertise in criminal law and international law. Regarding paragraph 4, he favoured option 1, with the expression "State Party". He had no special problems with the content of paragraph 8, but emphasized representation of the main legal systems of the world and the principle of equitable geographical distribution. Paragraph 9 was acceptable. For paragraph 10, a non-renewable nine-year term seemed the most reasonable. He was in favour of the idea in paragraph 11.

32. **Mr. PEREZ OTERMIN** (Uruguay) said that article 35 (b) and article 36 required a flexible approach, since the eventual workload was unknown. Initially, at least, judges should serve on a full-time basis, after which the position should be reviewed. The qualification requirements in article 37, paragraph 3 (b), should not be cumulative, but the qualifications of the judges collectively must encompass criminal trial experience and international law. The requirement in subparagraph (c) relating to working languages was perhaps excessive; that should be regarded as a secondary matter.

33. The election of judges also required a flexible approach. Initially judges should be elected by the United Nations General Assembly. Only later should the Assembly of States Parties elect them.

34. **Mr. ADDO** (Ghana) favoured a single pre-trial chamber. An appeals chamber was essential. Article 36 should provide for full-time judges, and they should be 21 in number. The judges must have both criminal trial experience and competence in international law. The existing mechanisms for election in the United Nations system could be used to elect the judges of the Court.

35. He agreed with the provisions in article 37, paragraph 8, on the representation of the principal legal systems, equitable geographical distribution and gender balance but favoured the deletion of subparagraph (b), "the representation of the main forms of civilization".

36. **Ms. RAMOUTAR** (Trinidad and Tobago), supported by **Mr. McCOOK** (Jamaica), said that the Pre-Trial Chamber in article 35 was necessary to ensure the performance of important functions described elsewhere in the Statute. A single Pre-Trial Chamber should be established in the first instance and, as and when necessary, additional chambers could be established by the Court itself.

37. Article 37 should provide for highly qualified judges with criminal trial experience and knowledge of international law. She was not in favour of the screening process proposed for nomination of candidates, which might open the door to political and other influences. She preferred nomination by States parties.

38. **Mr. PANIN** (Russian Federation) said that a single pre-trial chamber would be preferable, but the volume of work might require additional pre-trial chambers. Only the judges making up the Presidency should be full-time. The remainder could be convened by the Presidency as required. They must be highly experienced and well qualified in criminal law and have recognized competence in international law. A proper balance must be struck. In a trial chamber, priority might perhaps be given to judges with experience in criminal justice.

39. With reference to paragraph 4 of article 37, candidates should be nominated by States parties and the judges should be elected by the Assembly of States Parties by a two-thirds majority for a term of nine years. That would help to ensure the greatest possible independence on the part of the judges.

40. Rotation might be possible between Trial and Pre-Trial Chambers, but not with the Appeals Chamber.

41. In electing judges, the Assembly of States Parties should take into account the need for representation of the principal legal systems of the world and equitable geographical distribution. The other elements of paragraph 8 of article 37 had no bearing on ensuring an impartial criminal justice system.

42. **Ms. TOMIČ** (Slovenia) strongly supported article 37, paragraph 8, subparagraphs (d) and (e).

43. **Mr. MANIWA** (Democratic Republic of the Congo) said that judges required above all a high moral character and technical competence. The principal legal systems should be represented. Equitable geographical distribution was needed. The reference to the main forms of civilization could be deleted, and a mathematical gender balance would be unnecessary.

44. **The CHAIRMAN** recalled what he had said at the beginning of the meeting. It was his understanding that the following provisions could be referred to the Drafting Committee: article 35, paragraphs (a), (c) and (d); article 39, paragraphs 1 and 2; article 41; article 45, paragraphs 1 and 2; article 46; and article 50. Article 39, paragraph 3 (a), article 45, paragraph 3, and articles 48 and 51 would be the subject of informal consultations.

45. *It was so decided.*

46. **The CHAIRMAN** invited the Coordinator for Part 4 to introduce "cluster 2": article 38; article 39, paragraphs 3 (b) and 4; articles 42 to 44; article 45, paragraph 4; and articles 47, 49, 52 and 53.

47. **Mr. RWELAMIRA** (South Africa), Coordinator for Part 4, said that there did not seem to be any major problems with paragraph 1 of article 38. There might be a need to consider paragraph 2, the issue being whether a judge elected to fill a judicial vacancy should be eligible for re-election after completing his or her predecessor's term, or whether that should be dependent on the period of the term remaining.

48. Article 39, paragraph 4, raised a matter of principle regarding the exact relationship between the Presidency and the Prosecutor.

49. Article 42 dealt with the excusing and disqualification of judges. It might be best to leave the situation envisaged in paragraph 1 to be governed by the internal rules of the Court. He would therefore suggest that the second of the bracketed alternatives in paragraph 1 should be used. The issue raised in paragraph 2 was whether nationality should be a ground for disqualification and, if so, the scope of application of that principle. In paragraph 3, the question was who had the right to request the disqualification of a judge, and whether that right should be extended to an interested State. In view of the indeterminate nature of the term "interested State", it might be useful to confine that right to the Prosecutor and the accused, but that should be discussed.

50. He suggested that the issue of the ex officio powers of the Prosecutor in paragraph 1 of article 43 be deferred until the formulation in article 12 and other articles related to the trigger mechanism was settled. The issue in paragraph 2 seemed largely to depend on the discussion of article 47, concerning removal from office. Another important issue was whether the Prosecutor and the Deputy Prosecutor or Prosecutors should serve on a full-time or a part-time basis.

51. Paragraph 3 of article 43 raised an issue regarding skills and qualifications, namely whether the Prosecutor and the Deputy Prosecutor should have trial or prosecution experience. In order to allow flexibility, it might be desirable to opt for the expression "extensive experience" rather than specify a number of years.

52. In paragraph 4 of article 43, one proposal was that the Deputy Prosecutor should be appointed by the Prosecutor. That was related to the proposal in article 47, paragraph 2 (c), that the Prosecutor should be able to remove the Deputy Prosecutor from office. Those issues might need discussion.

53. Paragraph 7 of article 43 dealt with disqualification. The question of the relevance of nationality should probably be considered in conjunction with the issue raised in article 42, paragraph 2. A related issue was whether disqualification should be decided on by the Presidency, the Appeals Chamber or the judges of the Court.

54. Paragraph 9, in square brackets, provided that the Prosecutor should appoint advisers with expertise on specific issues such as gender violence. One solution might be to include that particular provision in the Rules of Procedure and Evidence rather than in the Statute.

55. Paragraph 10 would provide for the protection of witnesses called by the prosecution, and for the inclusion in the Prosecutor's staff of people with expertise in trauma and matters related to sexual violence. The issue might better be considered under article 44, paragraph 4, which would establish a "Victims and Witnesses Unit".

56. Under article 44 itself, issues that arose were whether the States parties or the judges should elect the Registrar, what majority would be required and whether the Deputy Registrar should be elected or appointed.

Paragraph 4 raised issues also covered by article 68, paragraph 5, in Part 6 of the draft Statute. The question of the proper location of the paragraph, if it was included, might have to be considered.

57. Article 45, paragraph 4, allowing personnel seconded from States and organizations to assist in the work of organs of the Court, was controversial.

58. With regard to article 47, an issue that arose was whether it should be possible for the Deputy Prosecutor to be removed from office by the Prosecutor or only by the States parties. Paragraph 3 raised the issue whether the rights of those whose conduct was challenged should be governed by the Rules of Procedure and Evidence or the Regulations of the Court. As such matters were central to the functioning of the Court, he suggested that the Committee might consider whether they should not be governed by the Rules of Procedure and Evidence.

59. Article 52 dealt with the Rules of Procedure and Evidence and raised the question whether they should be an integral part of the Statute and annexed to it, as provided for in option 1 for paragraph 1. That would have implications for ratification and possibly also for signature. Option 2 was much more flexible. It provided merely that the Rules, which might possibly be adopted together with the Statute, should not be inconsistent with the Statute. In paragraph 2, the majority needed for the adoption of amendments to the Rules of Procedure and Evidence would need to be considered.

60. Finally, article 53, on the Regulations of the Court, raised three problems. The first issue was whether they should be adopted by a two-thirds or an absolute majority of the judges. The second issue concerned precedence in the case of a conflict between the Rules of Procedure and Evidence and the Regulations of the Court. The third issue related to the role of States parties in the elaboration of the Regulations.

61. **Mr. ADDO** (Ghana) said that he was satisfied with the thrust of article 42, and urged the removal of the brackets in paragraphs 2 and 3. The provisions of article 43 were adequate, but the functions in paragraph 10 would be better performed by the Office of the Registrar. He was not in favour of article 45, paragraph 4.

62. **Mr. McCOOK** (Jamaica) wished to see article 45, paragraph 4, deleted. The staff of the Court should be employed in accordance with its needs under the relevant provisions of the Statute. Staff should not be seconded from other bodies; concerns about so-called "gratis" personnel had been the subject of extensive discussions in other United Nations forums.

63. **Mr. DIVE** (Belgium) agreed to article 38, paragraph 2, and article 39, paragraph 4, *in toto* and proposed the deletion of the square brackets. In article 42, he was in favour of the first two paragraphs; he favoured the first bracketed alternative in paragraph 1 and the removal of the square brackets in paragraph 2.

64. In article 43, paragraph 1, the text in square brackets should be kept. He favoured keeping paragraph 9 and deleting paragraph 10. The rules on protection for witnesses should be a matter for the Registrar. He was therefore in favour of keeping paragraph 4 of article 44. The Registrar should be appointed by the judges, with a term of office of nine years, in line with that of the judges and the Prosecutor.

65. In article 45, he favoured keeping paragraph 4. The rules in article 47, paragraph 2, should be the same for the Deputy Prosecutor as the Prosecutor, and the first subparagraph (c) should be deleted.

66. Under article 49, paragraph 1, there should be the same privileges and immunities for the judges, the Prosecutor, the Deputy Prosecutor, the Registrar and the Deputy Registrar. In paragraph 4, the first bracketed alternative in subparagraph (a) should be chosen, and subparagraph (b) should be deleted.

67. In article 52, he was in favour of option 2. The Rules of Procedure and Evidence should be adopted by a two-thirds majority of States present and voting in the Assembly of States Parties. There should be no link with the adoption of the Statute. The emergency procedure in paragraph 3 should also require a two-thirds majority.

68. As for article 53, paragraph 1, he was in favour of adoption of the Regulations by an absolute majority of judges, because if a two-thirds majority was not obtained the Court might have no regulations. The last sentence in brackets should be deleted.

69. **Mr. BELLO** (Nigeria) said he wished to point out that, if it was decided that judges should serve full-time, there would be no need for paragraph 3 of article 41.

70. Under article 43, both the Prosecutor and the Deputy Prosecutor should serve full-time and be elected by an absolute majority of the States parties. In paragraph 8, disqualification of the Prosecutor or the Deputy Prosecutor should be decided on by the Presidency.

71. In article 44, paragraph 2, the judges should, by an absolute majority, elect a Registrar and a Deputy Registrar. Paragraph 4 of that article should be moved to article 43. It was the Prosecutor who had direct contact with the victims and the witnesses and who should arrange for assistance to them.

72. Paragraph 4 of article 45 could be deleted. The issues concerned should be dealt with in Parts 9 and 10 of the Statute. Alternatively, that provision could be worded: "The Presidency or the Prosecutor may request the assistance of personnel from any State Party, intergovernmental or non-governmental organization, in the exercise of his functions under this Statute."

73. In article 47, paragraph 2, removal from office of both the Prosecutor and the Deputy Prosecutor should be decided on by a majority of the States parties. He agreed with the proposal for an additional article appearing in footnote 28 of document A/CONF.183/2/Add.1. In article 49, paragraphs 1 and 2 should be aligned so that the officers in question enjoyed the same diplomatic privileges and immunities in the exercise of their duties under the Statute.

74. **Mr. MATSUDA** (Japan) thought that the reference in article 42, paragraph 1, should be to the Regulations of the Court rather than the Rules of Procedure and Evidence, for the reasons given earlier by the Coordinator. Paragraph 2, on the grounds for the disqualification of judges, was very important in terms of the independence and the impartiality of the Court. The grounds for disqualification must be in the Statute itself rather than in the Rules of Procedure and Evidence. The bracketed language in that paragraph should be retained. In paragraph 3, only the Prosecutor or the accused should have the right to request the disqualification of a judge.

75. In article 49, paragraph 1, he supported diplomatic privileges and immunities for judges, the Prosecutor and Deputy Prosecutors, but the Registrar and the Deputy Registrar should come under paragraph 2. In paragraph 2, the privileges and immunities enjoyed should be in line with those of the staff of the United Nations. Paragraph 2 might therefore be amended so that the officials concerned would enjoy "such privileges and immunities as are accorded to officials of the United Nations under article 5 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946". The first sentence of paragraph 3 was acceptable in principle but the

reference to counsel and experts should be clarified. The second sentence was superfluous; it was not necessary to accord such immunities to counsel and witnesses. Their correct treatment was sufficiently ensured by the first sentence.

76. **Mr. PANIN** (Russian Federation) would prefer the deletion of paragraph 4 of article 39 and the reference to interested States in article 42, paragraph 3. In paragraph 4 of article 43, both the Prosecutor and the Deputy Prosecutor should be elected by the States parties. He had no objection to paragraphs 9 and 10 of that article being transferred to the Rules of Procedure and Evidence. In article 45, paragraph 4, he had doubts regarding personnel being detailed by non-governmental organizations. In article 47, he agreed with the formulation of paragraph 2 (a). The Deputy Prosecutor and the Registrar should be removed from office by a decision of the States parties. The Deputy Registrar could be removed by the judges.

77. Finally, the Rules of Procedure and Evidence should be an integral part of the Statute.

78. **Mr. NYASULU** (Malawi) said that article 38 would depend on whether article 37 provided for re-election of judges. A person replacing a judge whose term had not yet expired should enjoy the same eligibility for re-election as his predecessor. In article 39, paragraph 3, the President should have responsibility for administration of the Court, which would include supervision of the Registrar and staff, but the words in brackets should not be retained because they implied an undue restriction on the Registrar. The Court should be left to develop its own internal arrangements for effective implementation of the Statute.

79. In article 42, paragraph 1, the reference should be to the Regulations of the Court. In paragraph 2, whether nationality should be a ground for disqualification might depend on the circumstances of the particular case. In paragraph 3, a State should not be allowed to ask for the disqualification of a judge. The Court would be dealing with individuals, and the matter should be left to the individuals concerned or the Prosecutor.

80. In paragraph 2 of article 43, prosecutors should serve on a full-time basis. He would prefer "extensive ... experience" to "ten years ... experience" in paragraph 3. Both the Prosecutor and the Deputy Prosecutor should be elected by secret ballot by the Assembly of States Parties, to serve for nine years, non-renewable. There was no reason to restrict the age of the Prosecutor or Deputy Prosecutor. In paragraph 8, disqualification should be decided on by the judges of the Court. Paragraph 9 should be deleted. Paragraph 10 of article 43 should be dealt with under paragraph 4 of article 44, taking into account article 68. In article 44, paragraph 2, the judges should appoint the Registrar for a term of nine years.

81. **Mr. KROKHMAL** (Ukraine) said that article 42, paragraph 3, should include interested States because the case considered might have some impact on States. He agreed that article 45, paragraph 4, was superfluous. Article 49, paragraph 3, giving immunity to witnesses and experts, was important and must be retained. In article 52, he was in favour of option 1, on the assumption that the Rules of Procedure and Evidence would have equal legal value with the Statute.

82. **Mr. PEREZ OTERMIN** (Uruguay) said that paragraph 4 of article 45 should be deleted. The United Nations had experienced problems with staff on loan or on secondment, especially in peacekeeping operations, because they were not part of the regular staff. That mistake should not be repeated with the Court.

83. **Mr. AL AWADI** (United Arab Emirates), supported by **Mr. CHUKRI** (Syrian Arab Republic), said that, in article 38, paragraph 2, the term of office of a judge elected to fill a vacancy should not exceed the term of office

of his predecessor. As for article 39, the square brackets in paragraph 3 (a) should be deleted. Paragraph 4 of that article should be retained.

84. In article 42, paragraph 1, the words in brackets should be replaced by "Regulations of the Court and their annexes". All the brackets in paragraph 2 should be deleted. In paragraph 3, the reference to an interested State should be deleted because States would not be party to the proceedings.

85. In article 43, paragraph 1, the term "complaints" should be deleted and the term "referrals" retained. In paragraph 2, the reference to different legal systems should be kept. In paragraph 4, the reference to the appointment of the Deputy Prosecutor should be deleted. The entire text of paragraph 7 should be retained.

86. Article 45, paragraph 4, should be dropped because it could have an adverse impact on the independence of the Court.

87. In article 47, paragraph 1, the words in square brackets should be replaced by the words "and its annexes". The subparagraphs of paragraph 2 could be replaced by words such as "by the body in which the person concerned discharged his or her functions". As for article 52, paragraph 1, he favoured option 2, with provision for a two-thirds majority, and the deletion of paragraph 3. In article 53, paragraph 1, an absolute majority should suffice for the adoption of the Regulations of the Court.

88. **Mr. EL MASRY** (Egypt), referring to article 43, thought that, to maintain a balance, the President of the Court and the Prosecutor should not have the same nationality or come from the same geographical group.

89. There could be objections to article 45, paragraph 4, since it could expose the Court to undesirable influence.

90. **Mr. QUINTANA** (Colombia) associated himself with everything said by the representatives of Jamaica and Uruguay on paragraph 4 of article 45, which should be deleted.

91. **Mr. NATHAN** (Israel) said that in article 42, paragraph 2, the material in square brackets should be kept because, in the situations described, there might be a conflict of interests. He opposed the inclusion in paragraph 3 of "an interested State"; the right in question should be limited to the Prosecutor and the accused.

92. The wording of article 43 on the Office of the Prosecutor might not be consistent with article 12. In paragraph 3, the qualifications of the Prosecutor and the Deputy Prosecutor should included 10 years' practical experience in the prosecution of criminal cases. Their term of office should be nine years, non-renewable.

93. Concerning paragraph 5, the Prosecutor and the Deputy Prosecutor should serve full-time and not engage in any other occupation of a professional nature; that would lead to a conflict of interests. The bracketed material in paragraph 7 should be retained.

94. The reference in article 47, paragraph 1, should be to the Regulations of the Court. In subparagraph (a) of paragraph 2, a two-thirds majority should be required, while in subparagraphs (b) and (c) an absolute majority would be sufficient.

95. In article 49, privileges and immunities should apply similarly to judges, Prosecutor, Deputy Prosecutor and Registrar. In paragraph 3, the immunity referred to in the second and third sentences was absolutely necessary for the proper functioning of the Court.

96. In article 53, it should be stated that the Regulations of the Court formed an integral part of the Statute, so that States parties signing the Statute would already be aware of the contents of the Regulations.

97. **Ms. TOMIČ** (Slovenia) supported the creation in article 44, paragraph 4, of a "Victims and Witnesses Unit" within the Registry. Only the Registry would be sufficiently neutral to provide that protection. The provisions would have to be harmonized with those of article 68, paragraph 5.

98. In article 52, she supported the proposal in option 2 that the Rules of Procedure and Evidence should enter into force upon adoption by the Assembly of States Parties, preferably by an absolute majority of those present and voting.

99. **Ms. BAJRAI** (Singapore) said that if nationality was to be specified as a ground for exclusion in paragraph 2 of article 42 and paragraph 7 of article 43, nationals of both the complaining State and the State on whose territory the offence was alleged to have been committed should be disqualified as judges, Prosecutors and Deputy Prosecutors.

100. **Mr. GRAMAJO** (Argentina) said that the text of article 42, paragraph 2, should remain as it stood and the square brackets should be removed. Concerning article 44, paragraph 4, the Victims and Witnesses Unit should come under the Secretariat of the Court or the Registrar of the Court, not the Prosecutor's Office. Article 43, paragraph 10, should be deleted.

101. **Ms. NAGEL BERGER** (Costa Rica), referring to paragraph 9 of article 43, said that there must be at least one adviser on gender violence in the Office of the Prosecutor. The United Nations General Assembly had acknowledged the importance of the problem of violence against women, yet there were still eminent jurists who did not understand that gender violence required special treatment.

102. **Mr. LAGEZE** (France) was in favour of deleting the words in brackets in article 39, paragraph 3 (a). Paragraph 4 could be replaced by a provision saying that, in performing its tasks under paragraph 3 (a), the Presidency would act in coordination with the Prosecutor.

103. In article 42, paragraph 1, he preferred the words "Regulations of the Court", and in paragraph 3 the reference to "an interested State" should be deleted. Only the Prosecutor or the accused should be able to request the disqualification of a judge.

104. In article 43, the Prosecutor and Deputy Prosecutors should be elected in the same way as judges and, to ensure their independence, for the same non-renewable term of nine years. They should exercise their functions on a full-time basis.

105. Regarding article 44, his preference, in the interests of proper management, would be for an arrangement which, while according a specific sphere of competence to the Registry, would place it under the Presidency.

106. The Rules of Procedure and Evidence, in article 52, should be adopted by the Assembly of States Parties by an absolute majority. They should be negotiated only after the adoption and signature of the Statute by the States concerned.

107. **Mr. MAHMOOD** (Pakistan), speaking on article 43, said that the Prosecutor should act only in cases referred to him by a State. Consequently, the bracketed words in paragraph 1 concerning information related to the alleged

commission a crime should be deleted. The Prosecutor should be elected by the States parties by a two-thirds majority. The Deputy Prosecutor could be appointed by the Prosecutor, thus obviating any need for States parties to meet every time a Deputy Prosecutor was to be appointed. The Prosecutor and Deputy Prosecutor should hold office for a non-renewable term of seven years.

108. Under article 47, paragraph 2, subparagraph (a), the removal of a judge should be by a two-thirds majority of States parties. Under subparagraph (b), the removal of the Prosecutor should be by an absolute majority of States parties. Under subparagraph (c), if the Deputy Prosecutor was appointed by the Prosecutor he should be removed by the Prosecutor; otherwise, by a majority of States parties. The Registrar, if appointed by the Court, should be removed by a majority of judges or, if elected, by a majority of States parties. The Deputy Registrar, if appointed by the Registrar, should be removed by the Registrar or, if elected, by the States parties.

109. In article 52, he supported the adoption of the Rules of Procedure and Evidence by a two-thirds majority of States parties present and voting.

110. **Mr. YEPEZ MARTINEZ** (Venezuela) said that the bracketed text in article 38 should be retained. In article 39, paragraph 3, the bracketed text was acceptable except that it should be up to the Registrar, not the Presidency, to supervise secretariat staff.

111. All the brackets should be deleted from article 42, paragraph 2, article 43, paragraphs 1, 5 and 7, and article 44, paragraph 4. Article 45, paragraph 4, should be deleted. In article 52, he preferred option 2.

112. **Ms. VEGA** (Peru) said that in article 42, paragraph 3, only the Prosecutor or the accused should have the right to request the disqualification of a judge. That right should not be given to an interested State, which would not be a party to the process.

113. **Mr. SHARIAT BAGHERI** (Islamic Republic of Iran) accepted the text of article 38, paragraph 2, except the part in square brackets. He supported the entire text of article 39, paragraph 3, including the phrase in brackets. Paragraph 4 should be deleted.

114. In article 42, he agreed with paragraph 1 and with the entire text of paragraph 2. He could accept article 43 provided that it did not give the Prosecutor ex officio powers. In paragraph 4, the Prosecutor and Deputy Prosecutors should be elected by States parties.

115. In article 44, the Registrar should be elected by the Assembly of States Parties and elected for the same non-renewable term as judges. He was in favour of paragraph 4. In article 45, the phrase "or non-governmental organizations" should be deleted. In article 47, serious misconduct needed to be defined. Decisions to remove judges were very serious, and should be taken by a two-thirds majority of States parties on the recommendation of two thirds of the judges of the Court. In paragraph 2 (b), the text in brackets should be retained, and the first subparagraph (c) should be deleted. Removal of the Registrar or the Deputy Registrar should require a majority vote of the judges. He agreed with paragraph 3 of article 47, and with article 49. In article 52, he was in favour of option 1.

116. In article 53, he would keep the bracketed last sentence of paragraph 1. The Regulations of the Court should be adopted by a two-thirds majority of the judges. Paragraphs 2 and 3 were acceptable.

117. **Ms. SHAHEN** (Libyan Arab Jamahiriya) said that in article 43, paragraph 2, the brackets around the provision on the representation of different legal systems should be removed. In paragraph 4, the Prosecutor and Deputy Prosecutor should be elected by an absolute majority of the States parties. Article 45, paragraph 4, should be deleted.

118. **Ms. PIBALCHON** (Thailand) said that, in article 43, paragraph 4, the Prosecutor and Deputy Prosecutor should be elected by secret ballot by an absolute majority of States parties. The excusing and disqualification of the Prosecutor, dealt with in paragraphs 6 to 8, should be the subject of a separate article, in line with the excusing and disqualification of judges in article 42. Thirdly, she supported paragraph 9 of article 43 in principle, whether included in that article or in the Rules of Procedure and Evidence. She supported the establishment of the Victims and Witnesses Unit.

119. On article 49, the persons referred to in paragraph 3 should not remain immune once they had been discharged from their functions.

120. **Ms. RAMOUTAR** (Trinidad and Tobago) supported the general thrust of article 43, especially paragraph 3 on the qualifications of the Prosecutor, which should be consistent with those for judges in respect of criminal trial experience. The Deputy Prosecutor should be elected in the same manner as the Prosecutor. The Registrar should be elected by the judges for a term of five years, renewable only once. The Registrar should be under the authority of the President. The judges, the Prosecutor, the Deputy Prosecutor, the Registrar and the Deputy Registrar should enjoy diplomatic privileges and immunities. The words in square brackets in article 49, "when engaged in the business of the Court", should be deleted, as those officers should enjoy such privileges and immunities at all times so that they could perform their functions independently.

121. In article 39, paragraph 3 (a), the text in square brackets could be deleted, as that idea was contained in the term "due administration of the Court". The Victims and Witnesses Unit should be established in the Registry of the Court, since victims or witnesses might be required to testify for either the prosecution or the defence.

122. **Mr. FORTUNA** (Mozambique) agreed with paragraphs 1 and 2 of article 42. With regard to paragraph 3, neither the Prosecutor nor an interested State should have the right to take action on the removal of judges. Regarding article 43, paragraph 4, the age limit for appointment as Prosecutor should be lowered. He agreed with the election of the Registrar by secret ballot by the judges under article 44, paragraph 2. In article 45, paragraph 1, the President of the Court should appoint the staff of the Registry. In article 49, the President of the Court should be the one to waive the privileges or immunities of the Registrar, Deputy Registrar and staff of the Registry.

123. **Ms. LI Ting** (China) said that, in article 43, paragraph 4, the Deputy Prosecutor, like the Prosecutor, should be elected by the States parties. Article 45, paragraph 4, should be deleted. In article 49, paragraph 3, she suggested the deletion of the text in brackets. In article 52, paragraph 1, she could accept option 2, but the legal status of the Rules should remain as under option 1. She was flexible on article 52, paragraph 3, but any decision taken should be by a two-thirds majority.

124. **Ms. JOYCE** (United States of America) stressed the need for cohesion in the Prosecutor's Office and also with respect to the Court as a whole. Election by States parties of the Deputy Prosecutor and the Registrar would be tantamount to giving them a separate power base. That would undermine the control of the Prosecutor over his or her Office and possibly the ability of the judges to keep the Registrar in check. The Deputy Prosecutor should be appointed by the Prosecutor and the Registrar by the judges.

125. **Mr. MANIWA** (Democratic Republic of the Congo) said that the reference to a three-year period in article 38, paragraph 2, was arbitrary. A judge elected to fill a vacancy should be eligible for re-election if less than half of the predecessor's term remained to be completed. Articles 39, 43 and 44 should be merged. Ensuring the safety of witnesses should be a task of the Registrar under the supervision of the President of the Court, with the assistance of the Prosecutor.

126. In article 42, paragraph 1, the reference should be to the "Regulations of the Court" rather than "Rules of Procedure and Evidence". Regarding paragraph 2, the criterion of nationality should be maintained, because a judge might simply be partial because he had the same nationality as a party to the case in question. A judge should also be able to disqualify himself in the circumstances covered by that article. Under paragraph 3, any interested party, including the Prosecutor, the accused, or an interested State, should have the right to request disqualification.

127. In article 43, paragraph 4, the Prosecutor and his deputies should be elected by secret ballot by a two-thirds majority of the States present and voting. Under article 44, the Registrar should be elected by the States parties and not the judges. The judges, the Prosecutor and the Registrar should all serve the same renewable term of five years.

128. He agreed with the deletion of article 45, paragraph 4, as acceptance of seconded staff might result in abuses. In article 47, paragraph 2, the second subparagraph (c) should be deleted.

129. In article 49, he agreed with paragraph 1, with the removal of the square brackets, and also supported paragraph 3. In article 52, he agreed with option 2, but a two-thirds majority should be needed.

130. **Ms. MAKELA** (Finland) said that both the Registrar and the Prosecutor should be independent of the Presidency, and both they and their deputies should be elected by the States parties. States parties should also decide as to their possible removal from office. She was in favour of the provision in article 43, paragraph 9, that the Prosecutor should appoint advisers with legal expertise on specific issues including sexual and gender violence and violence against children. The Victims and Witnesses Unit should be in a neutral location in the Registry.

131. **Ms. BRADY** (Australia) said that she would like the deletion of the reference to "an interested State" in article 42, paragraph 3. She would like to retain article 43, paragraph 9, regarding the appointment of advisers with expertise on issues including sexual violence and violence against children. Regarding article 43, paragraph 10, the provision of protective measures for prosecution witnesses should be dealt with by the Victims and Witnesses Unit covered by article 44, paragraph 4. That paragraph should be retained. However, the provision in article 43, paragraph 10, requiring the Office of the Prosecutor to include staff with expertise in trauma, including trauma related to crimes of sexual violence, should also be retained.

132. **Mr. Young-wook CHUN** (Republic of Korea) said that he would prefer, in paragraph 2 of article 42, not to include the text in brackets regarding the nationality of the judge. He supported restricting the right, in paragraph 3 of article 42, to request the disqualification of a judge to the Prosecutor and the accused. In paragraph 1 of article 43, all the brackets should be removed. He had no problem with the bracketed text in paragraph 9 of article 43. In article 44, paragraph 2, the Deputy Registrar should be appointed by the Registrar. He supported the provision in article 44, paragraph 4. Finally, in article 52, paragraph 1, he preferred option 2.

The meeting rose at 6.45 p.m.